

July 5, 2000

MEMORANDUM FOR RECORD

SUBJECT: Statement of Findings on Proposed Golf Course/Residential Development in Wetlands Adjacent to Crystal River at Glen Arbor, Michigan by The Bayberry Companies

1. Reference attached Environmental Assessment on the proposed work.

2. Summary/Remarks:

- a. The applicant's preferred alternative (PA):
Development of a course located on both sides of CR 675
 - (1) I have determined this project alternative would have benefits to economics and rights of property ownership
 - (2) I have determined this project alternative would have significant adverse impacts on conservation and overall ecology, terrestrial biota, wetlands, visual aesthetics, recreation, safety, and designated scenic and recreational values. Additionally, the cumulative impact of the loss of the landform would be significant. Any one of these significant adverse impacts outweighs the benefits of this alternative, therefore, this alternative is contrary to the overall public interest. The sum total of the significant adverse impacts results in an even greater weight against the benefits in the overall public interest balance.
 - (3) The impacts to water quality, and aquatic biota would potentially be significant; there does not exist sufficient information to make a reasonable judgement as to the magnitude of these impacts.
 - (4) Additionally the project would have potential adverse impacts on water supply and conservation.
 - (5) This alternative is contrary to the Section 404(b)(1) guidelines.
 - (6) Completion of an Environmental Impact Statement would be required prior to a decision to issue a

permit for this alternative.

- b. The applicant's alternative 3(e), with the proposed mitigation (preservation of 7.5 acres north of CR 675)-
 - (1) The significant adverse safety impact would be eliminated. However, the remaining significant impacts and adverse impact/project benefit balance are substantively the same as for the applicant's PA.
 - (2) This alternative is contrary to the Section 404(b)(1) guidelines.
 - (3) Completion of an Environmental Impact Statement would be required prior to a decision to issue a permit for this alternative.
- c. The housing only alternative (HA); including residential development north of CR 675.
 - (1) This alternative would have significant adverse impacts similar to alternative 3(e) with the mitigation as proposed by the applicant.
 - (2) This alternative could be accomplished without the need for a Department of the Army permit.
- d. Confining the course to the area south of CR 675, permanent protection of the entire area north of CR 675 by the applicant to serve as mitigation.
 - (1) This alternative would permanently eliminate development of the most sensitive and significant area (north of CR 675); it reduces the adverse impacts associated with the project below the significant level; preparation of an EIS would not be required.
 - (2) This alternative complies with the Section 404(b)(1) guidelines because the NA alternative would result in "significant adverse environmental consequences" which substantially exceed the adverse impacts of this alternative.
 - (3) A revised Public Notice, advertising this alternative is not required. This alternative is a downscaling of the PA, which was public noticed. Additionally, the Federal Agencies

were afforded the opportunity to comment on this alternative. Also, the project's main opponents, including FOCR, provided their comments on this alternative and those comments were carefully considered in the assessment.

- e. There has not been a mitigation alternative identified, which would otherwise minimize and offset the adverse impacts of golf course/residential development south of CR 675. If the applicant were develop or sell for development the property north of CR 675, it may preclude the issuance of a permit for development activities south of CR 675.
- f. Additional measures necessary to minimize the adverse impacts of confining the development south of CR 675 include:
 - (1) Incorporation of a detailed, enforceable monitoring plan which identifies water quality standards and the range of potential remedial actions in the event water quality impacts are realized.
 - (2) Further reduction of the wetland impact and avoidance of the riparian corridor south of CR 675. This may be accomplished by utilizing uplands occupied by the driving range.
- g. I have determined that a public hearing is not required. There is sufficient information upon which to base a decision to deny the applicant's PA and 3(e), as proposed, without additional public input. I note that there have been several public hearings and forums regarding the overall proposal in the past. There is sufficient information upon which to base a decision that confinement of the proposed golf course south of CR 675 with permanent conservation of at least 45 acres north of CR 675 is not contrary to the overall public interest.
- h. Significant overriding issues of national concern necessary to override the state MDEQ permit decision:
 - (1) Reference 33CFR 320.4(a) - The decision to issue a permit requires an evaluation of the project on the public interest. The evaluation entails a weighing and balancing of all relevant factors. The regulations list 21 factors, including conservation, general environmental

concerns, wetlands, fish and wildlife values, land use, and water quality. The regulations do not attribute supremacy or particular weight to land use or any other consideration; rather they indicate "the specific weight of each factor is determined by its importance and relevance to the particular proposal". They also indicate "a permit will be denied ... if such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines".

- (2) Reference 320.4(j)(2) - The district engineer will "normally accept" state and local land use decisions "unless there are significant issues of overriding national importance". The regulations specifically list water quality, preservation of special aquatic sites, including wetlands, with significant interstate importance as such issues. The regulations are specific in not limiting consideration to these and other listed issues. The regulations indicate "Whether a factor has overriding importance will depend on the degree of impact in an individual case."
- (3) Reference 320.4(j)(4) - The regulations indicate "a permit will generally be issued following receipt of a favorable state determination", subject to:
 - aa. "the absence of overriding factors of the public interest"
 - bb. the "concerns, policies, goals, and requirements as expressed in 33 CFR Parts 320-324 and the applicable statutes have been considered and followed". The regulations cite the National Environmental Policy Act and the Clean Water Act among examples of such statutes.
- (4) This decision is based, in part, on a weighing and balancing of relevant factors. The Environmental Assessment (EA) identifies project impacts that qualify as "overriding national issues that extend beyond local zoning considerations". The EA also identified "significant natural resource features worthy of preservation on the site". My decision is that on balance, the weight of the local land use

determination and other public interest factors identified as project benefits is clearly overridden by the adverse public interest factors, including preservation of special aquatic sites. The site's significance to interstate tourism and to migratory birds are but two examples of significant interstate importance. All factors that outweighed land use and other positive factors are overriding in importance. Hence, the project is contrary to the overall public interest and a permit must be denied. My decision also considers that the proposed work and some alternatives are contrary to the 404(b)(1) guidelines, a fact that also necessitates permit denial.

(5) Additional support for the significance of the project area and issues of overriding national concern:

- aa. The site is adjacent to the Sleeping Bear Dunes National Lakeshore. The project would impact lakeshore natural resources such as the quality of surface and groundwater and wildlife populations, which function independent of property boundaries.
- bb. The project would impact a natural feature that is "globally rare" and "limited to the Great Lakes region of North America". The local and state perspective of the rarity or abundance of this resource and the weight given its protection is significantly different when viewed from a national and/or international perspective (i.e. this resource, while locally common, is found in a very limited area of the nation and world)
- i. Review of this application has included all policies of paragraph 320.4, "General Policies for Evaluating Permit Applications." I have concluded that the determination as to denial of the requested permit is within the District Engineer's authority as set forth in 33 CFR Part 325.8.
- j. Under the authority provided in paragraph 325.8 (b) as published in the Federal Register 13 November 1986, I

find that issuance of the requested permit is contrary
to the public interest.

Robert J. Davis
Lieutenant Colonel, U.S. Army
Detroit District Engineer